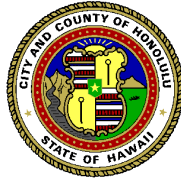


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR



JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

Date and Place: August 21, 2019
Kapālama Hale
Conference Room 153, 1st Floor
925 Dillingham Boulevard
Honolulu, Hawai'i 96817

Present: Hon. Victoria Marks (ret.), Chair

Hon. Riki Amano (ret.), Commissioner
Lynette Lo Kanda, Commissioner
David B. Monk, Commissioner
Hon. Allene Suemori (ret.), Commissioner

Jan K. Yamane, Executive Director and Legal Counsel (EDLC)
Laurie Wong-Nowinski, Associate Legal Counsel (ALC)
Janice K. Yonamine, Investigator (INV)
Kristine Bigornia (TA), Legal Clerk III (LCIII)

Moana Yost, Deputy Corporation Counsel,
Department of the Corporation Counsel (COR)

Christina Jedra, Reporter, Civil Beat
Sandy Ma, Executive Director, Common Cause

Absent: Michael Lilly, Esq., Vice Chair
Peter S. Adler, Commissioner

MINUTES OF THE ETHICS COMMISSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:35 a.m., declaring quorum with Commissioners Amano, Monk, and Kanda present.

II. New Business

A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution

Chair Marks shared additional distribution: 1) Editorial authored by Commissioner Monk in the *Star-Advertiser*; 2) Article in *West Hawaii Today* about an ethics complaint filed against the Hawaii County Board of Ethics; and 3) Written testimony submitted by Ms. Natalie Iwasa on various matters.

2. For Action: Approval of Open Session Minutes of July 17, 2019

Commissioner Amano made and Commissioner Monk seconded a motion to approve the open session minutes of July 17, 2019. The motion carried unanimously.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC stated that the LCIII is carrying out all front office duties and that the INV continues to carry her caseload and attended trainings.

At 11:39 a.m., Chair Marks acknowledged that Commissioner Suemori entered the meeting.

The EDLC stated that the ALC continues to carry her workload, much of which is administrative. She is also finalizing the biennial ethics training.

2. Statistics

a. Website Sessions – June (364) and July (531) 2019

Commissioner Kanda asked the EDLC to explain what the numbers represent. The EDLC explained that *sessions* reflect users who remain on the website long enough to read, do research, and the like, not users who move quickly on and off the site.

d. City's FY2019 Annual Report – Update

The EDLC stated that every year the Customer Services Department (CSD) publishes the City's annual report with agency statistics and narratives. Staff is currently compiling FY2019 statistics for this report. The EDLC explained that in the FY2018 annual report, the Ethics Commission greatly expanded the data table to include categories that had not been previously compiled or reported, so compilation takes a lot of time. For budget purposes, though, it is extremely important to justify with data what we actually do as an office.

The EDLC continued that CSD allows space for two accomplishments. For FY2019, the Commission reported that it: 1) Expanded its outreach and education program; and 2) Expanded data collection.

Chair Marks asked for staff to respond to Ms. Natalie Iwasa's written testimony, requesting that the EC use Facebook instead of Twitter as its social media platform. The ALC explained that the Commission originally started using Facebook for social media, but switched to Twitter because it was trending and takes fewer resources.

Chair Marks asked if we can link Twitter to Facebook and if there are people checking in on Facebook like they are on Twitter. The ALC stated that she would research that. She continued that the EC had "friends" on their Facebook account, but couldn't recall how many there were. The EDLC stated that she was surprised about the continuing questions about the Commission's Facebook account because it was dormant for years prior to switching to Twitter.

Commissioner Amano asked if staff can list pros and cons before taking action to link the accounts. The EDLC stated that the office does not have a social media manager and that the ALC tweets, in addition to all her other responsibilities. Social media takes time and resources.

3. Budget

b. FY2021 Operating Budget Request – Update

The EDLC stated that she and Chair Marks recently met with the Department of Budget and Fiscal Services (BFS) to discuss goals in light of established budget ceilings. Commissioner Kanda asked if the requested budget reflects increasing staff as per the Strategic Plan. Chair Marks confirmed, and explained that BFS recommended requesting additional staffing incrementally.

The EDLC stated that finalizing the Strategic Plan is important because it establishes the Commission's long-term vision. This matters to BFS because it analyzes budget requests over a ten-year cycle, not just for an upcoming fiscal year. BFS said that it appreciates the Commission's early notice about staffing. The EDLC stated that the Commission received most of its last year's budget requests. The EDLC and ALC salaries have caught up to appropriate levels; additional staff was added, and training funds were provided for staff, but not for Commissioners.

Chair Marks commented that she learned at City Council budget hearings that the Police Commission has a training budget for all of its commissioners to attend an in-state and out-of-state event each year. The EDLC stated that she will continue to ask for training funds because two of our Commissioners currently pay for their own travel and training expenses and have done so for years.

Last year, the Commission initially requested funding for a complaints database software license, but found out that the vendor will own our data should the Commission discontinue the license. Thereafter, staff reached out to another company that built the State Department of Commerce and Consumer Affairs (DCCA), Regulated Industries Complaints Office's (RICO) database. RICO owns the database and its data. Staff continues outreach with this company; at present, this work is pending.

4. Education and Outreach

a. Ethics Training Program (FY19–FY20) – Update

The ALC stated that we are in the second year of the biennial cycle and pushing to get the online training out. During the summer, we received helpful comments on the draft training curriculum from Commissioner Kanda, COR Deputy Yost, Director of Human Resources Kubo, and Equal Opportunity Administrator Tsukayama. The ALC continued that the training program is in its final production stage. The EDLC reminded the Commission that the Commission does not have a production team.

b. Twitter – Update

The ALC stated that the New York City Conflict of Interests Board (NYC-COIB) invited the Honolulu Ethics Commission to be on a social media panel and represent small agencies using social media. The panel discussion will be held at the Council of Government Ethics Laws (COGEL) conference in Chicago, Illinois (December 15-18, 2019).

Commissioners Monk and Suemori commented that we likely represent struggles of other small agencies across the country and that this will be a valuable experience.

c. E-Newsletter – Update

The EDLC stated staff will send out a flyer to educate city employees on the appropriate use of funds raised for Honolulu City Lights prior to an October e-newsletter.

d. For Discussion and Action: Formation of a Permitted Interaction Group to Develop and Implement a Community Outreach Plan (DRAFT)

Commissioner Kanda suggested brainstorming on how to address the media in a timelier manner. She explained that she felt that the public does not understand what the Commission does. Also, the Commission wants to know what it can legally say to a member of the public who wants to address their complaint in an open meeting. COR Deputy Yost answered that the Commission must follow confidentiality laws and advised that in case specific circumstances, the Commission should enter into executive session with that person and ask if they want to discuss it in public. If the matter is in the investigation process, it cannot be discussed. COR Deputy Yost confirmed that the Commission can state that they responded to the concern but cannot get into specifics. The EDLC stated that it would be up to the complainant to disclose specifics as only they can waive confidentiality.

Commissioner Monk suggested posting “What We Do and What We Don’t Do” from our newsletter on the Commission’s website. He continued that there are a couple of points that Ms. Iwasa expressed about the Integrity Hotline that we should address. The EDLC explained that the Integrity Hotline is an internal City program contracted by the Internal Control Division (ICD), BFS. ICD, Equal Opportunity Office, and Ethics triage in-coming cases. Lately, most cases involved human resources and management issues that have been referred to department directors or up the chain of command to the Managing Director.

Chair Marks consulted with COR Deputy Yost about creating a Permitted Interaction Group (PIG) and delegating media issues to it. COR Deputy Yost advised that a PIG is created to report back to the whole Commission on one issue, but for ongoing issues, the Commission should form a standing committee subject to the sunshine law.

Chair Marks asked if instead of establishing a PIG, can the Commission delegate responding to the media to Commissioner Monk or Commissioner Kanda. COR Deputy Yost confirmed, but she would like to conduct additional research and get back to the Commission.

The EDLC stated that a Commissioner can submit their own article, such as Commissioner Monk had done. His *Star Advertiser* article was not endorsed by the Commission. Commissioner Monk stated that he also submitted a piece to *Civil Beat*, which was longer and included points that were not mentioned in the *Star-Advertiser* piece, but *Civil Beat* declined to publish.

The ALC asked if *Civil Beat* provided a reason for declining to publish. Commissioner Monk stated that they did not provide reasons, but asked if he wanted to do an interview for an editorial. He stated that he is not inclined to do that because he would not have control over the published content. Commissioner Monk stated that he specifically reached out to *Civil Beat* because of their coverage and blind acceptance of a conspiracy theory about what happened with the Commission and its former executive director and investigator.

Chair Marks asked for confirmation that the former investigator was on a series of 89-day contracts. The former investigator was offered, but did not accept, the Commission’s full-time exempt investigator position. That position remained vacant until the contract investigator’s final contract ended and was subsequently filled by a full-time employee. The EDLC confirmed.

5. Legislation

- c. City Council Meeting (August 7, 2019)
 - i. Evaluation of Ethics Board of Appeals, Ordinance 17-44 (ROH 1990 Chapter 3, Article 15), Committee Report No. 218

The EDLC and COR Deputy Yost explained that the City Council is looking to eliminate boards and commissions that were inactive as required by a 2017 bill. City

Council requested COR to review the necessity of the Ethics Board of Appeals as it has never met. There is a state law, however, that requires an appeals board for all county agencies that impose civil fines. Therefore, COR needs to determine how to eliminate the Ethics Board of Appeals and still comply with the law. COR Deputy Yost explained that, administratively, having an Ethics Board of Appeals to ensure a due process hearing pursuant to Hawai'i Revised Statutes Chapter 91 makes no sense because the Commission already provides such a hearing during the contested case; any fine imposed would be directly appealable to the circuit court. Commissioner Suemori confirmed. The EDLC shared that staff met with COR on this issue and brainstormed solutions, such as delegating the first contested case hearing to a hearings officer, but the hearings officer would still need to make a recommendation to the Commission for a final decision. COR Deputy Yost will get back to the Commission on her recommendation.

- ii. Resolution 19-173 – Request Additional Funds to Pay for Services of Chong, Nishimoto as Special Counsel for Representing Defendants Honolulu Ethics Commission and the City and County of Honolulu in Kealoha et. al. v. Totto et. al., Committee Report No. 216

The EDLC stated that City Council approved payment and the final invoice is around \$356,000.

- 6. Education Opportunities – Commissioners and Staff
 - a. Weinstein Ethics Conversation Series (July, August 2019) – Report

The EDLC stated that the Weinstein Ethics Conversation Series is a free series offered at University of Hawaii every summer. She attended two sessions: 1) Legal Ethics; and 2) Political Ethics. The EDLC stated that the Legal Ethics discussion centered around the Kealoha cases. In the Political Ethics discussion, Lt. Governor Green discussed the negative effects that Political Action Committee (PAC) money had on his campaign. A PAC negatively campaigned against his opponent, which ended up costing him six percentage points.

- b. Hawai'i Ethics Conference (September 5, 2019) – Update

The EDLC asked for comments on the draft agenda. The Commission discussed the logistics of the upcoming conference.

- c. Common Cause (September 5, 2019) – *Ethics in Hawai'i Under Siege?*

The EDLC stated that Common Cause is hosting a panel on September 5, 2019, to discuss ethics in Hawaii and, specifically, the Kealohas. Common Cause invited the former EDLC, former investigator, and the current State Ethics ED, but did not invite any current Honolulu Ethics commissioners or staff. Commissioners expressed concern over disclosure of confidential information by the former EDLC and investigator given the ongoing Kealoha cases. Commissioner Suemori asked what the Commission can do if former staff breaches confidentiality. The EDLC stated that the Commission could bring cases against those

individuals. Chair Marks commented then we can impose a fine on them. Commissioner Suemori agreed.

The EDLC stated that previously, Common Cause live-streamed its event via Facebook. If it broadcasts the upcoming panel, the Commission can watch the discussion and respond accordingly. Commissioner Suemori stated that breaching confidentiality would violate the Standards of Conduct. The EDLC confirmed, adding that the Commission cannot give the former EDLC and investigator preferential treatment because they were former staff. Commissioner Suemori agreed.

Common Cause's Executive Director Sandy Ma testified, reiterating for the record that Common Cause is not planning this event to be a Kealoha-specific discussion; instead, it was meant to be a general discussion on ethics in Hawaii. The descriptions of the former EDLC and former investigator as working on the Kealoha cases were just to inform the audience of who they were. She confirmed that the confidentiality of the Kealoha matters will be respected and that she will open the panel discussion with the email from Commission staff voicing the Commission's objections. The EDLC clarified that any and all matters investigated by either one of them are confidential.

The EDLC requested a copy of the recording of the panel discussion. Ms. Ma confirmed she will provide a recording if available.

Commissioner Suemori asked if the intent was to discuss current ethics in Hawaii, why did she invite the current state EDLC but not the current city Commission Chair or EDLC? Ms. Ma explained she does not like to have panel discussions where people are bickering and talking over one another. Commissioner Suemori stated that the facilitator would prevent the bickering and talking over each other.

Ms. Ma stated that she would be happy to have another panel discussion featuring the current Commission and the EDLC. Commissioner Suemori asked Ms. Ma if she asked the former Executive Director or former Chair of the State Ethics Commission to be on the upcoming panel. Ms. Ma responded in the negative. She then invited Chair Marks to attend the event to correct any misstatements made by the panel. Ms. Ma confirmed that she would open up the panel discussion to include questions from the audience. Commissioner Monk expressed concern over opening discussion from the floor given the unpredictable and unstopable nature of the audience discussion.

Ms. Ma stated that she takes that concern into account and encouraged the Commission to attend the panel so that the Commission could ensure that inappropriate discussions do not occur. Ms. Ma apologized for the unintended impression she gave about the nature of the panel discussion.

- d. SCCE 18th Annual Compliance & Ethics Institute 2019 (September 15–18, 2019), Gaylord National, National Harbor, MD – Update

The EDLC stated that she will be attending the Society of Corporate Compliance and Ethics (SCCE) conference. Training costs will be paid by the City.

- e. 41st Annual COGEL Conference (December 15-18, 2019), Chicago Marriott Downtown, Chicago, IL – Update

The EDLC stated that the ALC's travel and conference registration will be paid by the City. Chair Marks and Commissioner Amano will pay for their own registration and travel. The EDLC will also pay for her own travel but will request that the City pay for her registration.

- 7. Open Records Law (Chapter 92F, Hawai'i Revised Statutes)
 - a. OIP Memorandum Decision – Financial Disclosures Statements (June 26, 2019)

COR Deputy Yost stated that the Office of Information Practices (OIP) memo decision is based on a 2016 UIPA request to the Commission for certain financial disclosure statements. OIP stated that the employee's information such as their name, date of hire, administrative services officer, and position, are not confidential, but the rest of the information on the form is confidential and should be redacted.

Commissioner Amano disclosed that her husband works at OIP and that he did not draft this opinion. The EDLC confirmed there was no need for recusal.

- 8. Open Meetings Law (Chapter 92, Hawai'i Revised Statutes)
 - a. Hawai'i Supreme Court Opinion SCAP-17-0000899 (June 27, 2019)

COR Deputy Yost and the EDLC explained the new personnel discussion disclosure requirements discussed in a recent Hawaii Supreme Court decision on the Police Commission's handling of Chief Kealoha's evaluation. The court stated that if an agency specifically goes into executive session for the hire, evaluation, dismissal, or discipline of an officer or employee, it also needs to make a preliminary determination on whether or not there is a legitimate expectation of privacy on a case-by-case basis based on the court's guidelines.

COR Deputy Yost further explained that the Commission should enter into executive session to determine if the matter affects the person's privacy. After the Commission makes its determination, it exits out of executive session to announce its decision. COR Deputy Yost further stated if the Commission determines that these matters affect the person's privacy, then they will announce that in open session and return to executive session to discuss the substantive matters.

Commissioner Amano asked for confirmation that the Commission needs to do a sub-analysis of whether or not privacy interests are affected so we have to go through a double analysis. COR Deputy Yost confirmed. The EDLC stated that she will work with COR Deputy Yost on language reflecting this new requirement on the next agenda.

9. Executive Director and Legal Counsel Annual Evaluation (Defer to October 16, 2019 Ethics Commission Meeting)

The EDLC announced that the EDLC evaluation will be deferred to the next meeting because Vice Chair Lilly is unavailable.

III. Strategic Planning

A. For Discussion and Action: *Ethics Commission–2027 (Amended)*

Chair Marks stated that a draft of the Strategic Plan is posted on the website. Commissioner Kanda stated that she could not find it. LCIII stated that the current draft is included with the meeting materials, and that there is an older draft on the “What’s New” webpage. Commissioner Kanda asked the status of our Strategic Plan document. Chair Marks answered that it is in the last iteration. Commissioner Kanda urged the Commission to expedite finalizing and publishing the plan.

Chair Marks stated that she met with staff to obtain their input on positions. Then, at the last PIG meeting, the PIG decided the ideal staffing for the Commission in the next ten years is a total of ten upper-level positions. Commissioner Suemori suggested sequencing the positions in priority in the plan. Chair Marks confirmed.

Commissioner Monk stated that he would like to endorse two of Ms. Iwasa’s suggestions for the Strategic Plan: 1) In What We Do, Part 2 on page 2 – include “investigations” as part of our functions; and 2) On page 7, replace “determined by” with “subject to” so it reads: “our budget will always be subject to approval by others.”

Commissioner Suemori moved to approve the Strategic Plan with amendments. Commissioner Monk seconded. The motion was unanimously accepted.

Commissioner Kanda requested that the Strategic Plan to be posted on the front page of the website.

Chair Marks stated that the attachments are part of the Strategic Plan itself. Staff has accomplished a lot given that the Commission is still dealing with three lawsuits.

The EDLC stated that the last attachment to the Strategic Plan will be the Commission’s FY2019 statistics, which should be completed by the end of the week.

Commissioner Suemori reiterated for clarity that the motion was to adopt the Strategic Plan with all the attachments, including 2019 statistics when updated.

IV. Adjournment

At 12:57 p.m., Commissioner Suemori made and Commissioner Monk seconded a motion to adjourn the Ethics Commission meeting. The motion carried unanimously.

- A. Next Reserved Meeting Date: September 18, 2019
- B. Next Scheduled Meeting Date: October 16, 2019